

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

SEP 04 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FORTUNATO DIAZ; et al.,

Petitioners,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 06-74951

Agency Nos. A97-347-077
A97-347-078

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted August 26, 2008**

Before: SCHROEDER, KLEINFELD, and IKUTA, Circuit Judges.

Fortunado Diaz and Jesus Fernando Diaz Alcantara, natives and citizens of Mexico, petition pro se for review from the Board of Immigration Appeals ("BIA") denial of their motion to reopen to seek relief under the Convention Against

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Torture ("CAT"). We have jurisdiction pursuant to 8 U.S.C. § 1252. We review the BIA's decision for abuse of discretion. *See Lara-Torres v. Ashcroft*, 383 F.3d 968, 972 (9th Cir. 2004). We deny the petition for review.

We conclude that the BIA did not abuse its discretion in denying the motion to reopen because petitioners' motion was untimely filed and failed to meet an exception to the time limits on motions to reopen. *See* 8 C.F.R. § 1003.2(c)(2). Petitioners' claim for protection under CAT failed to present changed country conditions in Mexico that are material to petitioners or their circumstances, and therefore, failed to meet their burden of presenting a prima facie CAT claim to support reopening. *See* 8 C.F.R. § 1003.2(c)(3)(ii); *Kamalthas v. INS*, 251 F.3d 1279, 1283 (9th Cir. 2001).

PETITION FOR REVIEW DENIED.